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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JOHN MIN,

10 Petitioner,

11 Case No. C11-647-JCC-BAT
12 CR09-0083-JCC

13 v.

14 UNITED STATES OF AMERICA,

15 Respondent.

16 **REPORT AND**
17 **RECOMMENDATION**

18 John Min filed a pro se 28 U.S.C. § 2255 motion in which he sought to vacate the 48-month
19 sentence he received after pleading guilty to wire fraud. Dkt. 1 The Court previously dismissed
20 four of the five claims Mr. Min raised. Dkt. 12. However, as to Mr. Min's claim that his trial
21 lawyer was ineffective by failing to file a notice of appeal, the Court ordered an evidentiary
22 hearing and appointment of counsel. *Id.*

23 On March 5, 2012, Assistant Federal Public Defender John Carpenter was appointed to
24 represent Mr. Min. On April 20, 2012, Mr. Min and the United States filed a stipulated motion
25 for voluntary dismissal without prejudice. Dkt. 14. In his motion, Mr. Min indicates he no
26 longer wishes to proceed with the action and acknowledges that dismissing this case without
27 prejudice will not excuse Mr. Min from complying with the applicable statute of limitations.

28 Based on the parties' stipulated motion to dismiss the matter and the record in this case, the

Court recommends:

- (1) **GRANTING** the stipulated motion to dismiss the matter without prejudice (Dkt. 14);
 - (2) **STRIKING** the evidentiary hearing currently set for June 19, 2012;
 - (3) If this recommendation is adopted, it should be approved immediately.

A proposed order accompanies this Report and Recommendation. The Clerk shall provide the parties and the Honorable John C. Coughenour a copy of this Report and Recommendation.

DATED this 23rd day of April, 2012 .


BRIAN A. TSUCHIDA
United States Magistrate Judge